

MEMO ENDORSED

Elizabeth Silver

*545 8th Avenue, Suite 401 New York, NY 10018
Tel # (646) 719-0003 & Email: liz@perezrevenge.com*

August 18, 2008

*Via Fax # (212) 805-4258
Hon. Debra Freeman USMJ
United States District Court Hours
Southern District of New York
500 Pearl Street, Chambers
New York, NY 10007*

Re: Silver v Lavandeira, 08-cv-6522 (JSR)(DCF)

Honorable Judge Freeman:

I am the plaintiff pro-se in the above matter.

I write as a follow up to Judge Rakoff's August 13, 2008 Order (Doc. # 8) to inform the Court that I am available to and will participate in any Conference Call the Court wishes to schedule with regard to the Motion to Dismiss that the Defendant's counsel, Mr. Eilender has said he intends to file based on alleged failure to effectuate proper service and/or alleged lack of jurisdiction in NY. The Court should note that the time for Defendant to answer plead or otherwise move in response to the complaint was due on August 11, 2008. (See Doc. # 7). Mr. Eilender previously informed the Court on July 28, 2008 Telephone Conference with the Court that he would file his responsive pleading by August 12, 2008. After last week's Court appearance and Oral Argument on the Motion for Emergent Relief and Mr. Eilender's withdrawal of the Motion, and Judge Rakoff's August 13, 2008 Order, I have yet to hear back from Mr. Eilender.

I therefore propose the following schedule:

Sept. 5, 2008 – Defendant's Motion to Dismiss Due
Sept. 26, 2008 – Plaintiff's Response & Opposition to Motion to Dismiss Due
Oct. 10, 2008 - Defendant's Reply Due ¹

With this briefing schedule, the Court can then schedule the Oral Argument on the Motion for the 1st available date – at the Court's convenience - after October 17, 2008.

I respectfully pray that the Court So Order this letter and the proposed schedule.

¹ Your Honor should note I am shortening my time to respond so that we can get this matter moving and avoid further delays. This schedule was drafted with Mr. Eilender's vacation schedule in mind and the dates I am proposing are consistent with the dates set forth in Mr. Eilender's August 13, 2008 letter (copy attached for ease of reference). Also, while I note that Mr. Eilender states he will leave for Italy on Oct. 9th (Yom Kippur) and will be there for 1 week, I submit he, his co-counsel and one of the partners / associates in his firm can finish whatever portion of the papers before he leaves or even if he is in Italy.

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The Court should also note that I have also prepared and am submitting Subpoenas for Production of Documents that are directed to Third Parties in NYC. The subpoenas are designed to help produce additional documentation to demonstrate that the Court has jurisdiction over Defendant Mario Lavandeira, by virtue of the business solicited or conducted and/or the services he provides to or purchases from entities in NYC including but not limited to (i) E! Television, (ii) Time Warner / Warner Bros. Records, (iii) IMG - Fashion Week, (iv) MTV / Viacom, (v) WPLJ, (vi) Voxel dot Net, (vii) Hot Topic Stores, (viii) Star Magazine and others.

I respectfully pray that the Court direct the Pro Se Clerk to sign off on these subpoenas so that they can be promptly served and the evidence secured in time for Plaintiff's response to Defendant's Motion to Dismiss. *Note: I respectfully submit that a Motion to Dismiss based upon an allegation that Defendant Lavandeira is not subject to this Court's jurisdiction is preposterous and potentially sanctionable.*

Thanking you for the Court's assistance in moving this matter forward, I remain,

Respectfully,



Elizabeth Silver

Cc: All Counsel by Fax

Plaintiff's proposed briefing schedule, as set forth herein, is adopted.

As to plaintiff's request for the issuance of subpoenas, the court notes that discovery in this action is currently stayed, and the stay would apply to third-party discovery, as well as party discovery. If plaintiff is seeking to serve subpoenas in connection with the California action, she should make that clear, and, in that context, the court will give defendant an opportunity to respond.

SO ORDERED: DATE: 8/19/08

.....*Debra Freeman*.....

DEBRA FREEMAN
UNITED STATES MAGISTRATE JUDGE